

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

400Q0087

## HOUSE COMMERCE ENGROSSED NO. **HB 1049** 1/23/2009

Introduced by: The Committee on Commerce at the request of the Department of Revenue  
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding captive insurance  
2 companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-46-1 be amended to read as follows:

5 58-46-1. Terms used in this chapter mean:

6 (1) "Affiliated company," any company, in the same corporate system as a pure captive  
7 insurance company, owned or controlled, directly or indirectly, by a parent or  
8 subsidiary, or a member organization by virtue of control, operation, or management;

9 (2) "Association," any legal association of corporations, limited liability companies, or  
10 partnerships, the members of the organization of which;

11 (a) Own, control, or hold with power to vote all of the outstanding voting  
12 securities of a group captive insurance company incorporated as a stock  
13 insurer or nonprofit corporation; or

14 (b) Have complete voting control over group captive insurance company formed



1                   as a limited liability company;

2       (3)    "Captive insurance company," any pure captive insurance company or any group  
3            captive insurance company;

4       (4)    "Controlled unaffiliated business," any person that is not in the corporate system of  
5            a parent and its affiliated companies and has an existing contractual relationship for  
6            its control, operation, or management with the parent or one of its affiliated  
7            companies;

8       ~~(3)~~(5) "Director," the director of the Division of Insurance;

9       (6)    "Group," any association of corporations, partnerships, or limited liability companies  
10           with substantially similar or related risks, the members of which collectively own,  
11           control, or hold with power to vote all of the outstanding voting securities or other  
12           ownership interest of a group captive insurance company;

13       (7)    "Group captive insurance company," any company that insures the risks of the  
14           member organizations of the group, the risks of the affiliated companies of the  
15           member organizations, or the risks of the association;

16       (8)    "Member organization," any corporation, limited liability company, or partnership  
17           that belongs to an association;

18       ~~(4)~~(9) "Parent," a corporation, partnership, or individual that directly or indirectly owns,  
19           controls, or holds with power to vote more than fifty percent of the outstanding  
20           voting securities of a pure captive insurance company;

21       ~~(5)~~(10)    "Pure captive insurance company," any company that insures risks of its parent  
22           and affiliated companies or a controlled unaffiliated business.

23       Section 2. That § 58-46-2 be repealed.

24       —~~58-46-2. Any captive insurance company may apply to the director for a certificate of~~

~~authority to do insurance business. However, a captive insurance company may not insure any risks other than those of its parent and affiliated companies.~~

Section 3. That § 58-46-3 be amended to read as follows:

58-46-3. No captive insurance company may do any insurance business in this state unless:

- (1) It first obtains from the director a certificate of authority authorizing it to do insurance business in this state;
- (2) Its board of directors commits to hold at least one meeting each year in this state;
- (3) It maintains its principal place of business in this state and keeps at this place complete records of its assets, transactions, and affairs, in accordance with the methods and systems which are customary or suitable as to the kinds of insurance transacted; and
- (4) It appoints a resident agent to accept service of process and to otherwise act on its behalf in this state. If the registered agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company, the director shall be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

A group captive insurance company shall limit its exposure to loss on any one risk or hazard as required by chapter 58-13, unless the risk or hazard is reinsured through an insurance company which is licensed or accredited in this state, or unless other safeguards to the group captive insurance company's financial solvency and stability are in place and are acceptable to the director.

Section 4. That § 58-46-8 be amended to read as follows:

58-46-8. No pure captive insurance company may be issued a certificate of authority unless it possesses and maintains unimpaired paid-in capital of one hundred thousand dollars and

1 surplus of one hundred thousand dollars. No group captive insurance company may be issued  
2 a certificate of authority unless it possesses and maintains unimpaired paid-in capital and  
3 surplus of at least two hundred fifty thousand dollars but not more than five hundred thousand  
4 dollars, the amount of which shall be determined at the discretion of the director. A captive  
5 insurance company may have capital and surplus in excess of five hundred thousand dollars.  
6 However, for a group captive insurance company, the ratio of premium to surplus may not be  
7 more than three to one unless the director has provided prior written approval for a different  
8 ratio. The capital and surplus may be in the form of cash or an irrevocable letter of credit issued  
9 by a bank chartered by the State of South Dakota or a member bank of the Federal Reserve  
10 System and approved by the director.

11 The director may prescribe additional capital and surplus for either a pure captive insurance  
12 company or a group captive insurance company based upon the type, volume, and nature of  
13 insurance business transacted, which capital may be in the form of an irrevocable letter of credit  
14 issued by a bank chartered by the State of South Dakota or a member of the Federal Reserve  
15 System and which is approved by the director.

16 Section 5. That § 58-46-9 be amended to read as follows:

17 58-46-9. No group captive insurance company may pay a dividend out of, or other  
18 distribution with respect to, capital or surplus, in excess of the limitations set forth in § 58-5A-  
19 35, without the prior approval of the director. A pure captive insurance company may pay out  
20 a dividend in excess of the limitations set forth in § 58-5A-35 if notice has been filed with the  
21 director ten business days prior to the payment of the dividend and the director has not  
22 disapproved the payment of the dividend during that ten-day time period.

23 Section 6. That § 58-46-10 be amended to read as follows:

24 58-46-10. A pure captive insurance company ~~shall~~ may be incorporated as a stock insurer,

1 as a nonprofit corporation with one or more members, or as a limited liability company. A group  
2 captive insurance company may be incorporated as a stock insurer or as a limited liability  
3 company.

4 Section 7. That § 58-46-15 be amended to read as follows:

5 58-46-15. On or before March first of each year, each group captive insurance company shall  
6 submit to the director a report of its financial condition pursuant to § 58-6-75. The report shall  
7 be audited by an independent certified public accountant pursuant to chapter 58-43. The director  
8 shall, by rules adopted pursuant to chapter 1-26, promulgate the forms on which captive  
9 insurance companies shall report. Each group captive insurance company shall file with its  
10 annual report of financial condition an actuarial opinion pursuant to § 58-26-13.1. Each group  
11 captive insurance company shall submit to the director annual reports of its financial condition  
12 pursuant to § 58-6-75. If requested by the director, the group captive insurance company shall  
13 submit quarterly reports of its financial condition pursuant to § 58-6-75. A pure captive  
14 insurance company may submit, in lieu of the annual independent audit required by this section,  
15 a certification of its financial condition using statutory accounting principles verified under oath  
16 by two of its executive officers. However, a pure captive insurance company shall provide a  
17 report of its financial condition audited by an independent certified public accountant at least  
18 every five years. Upon request to and approval by the director, a pure captive insurance  
19 company may use generally accepted accounting principles in lieu of statutory accounting  
20 principles in its certification of its financial condition.

21 Section 8. That § 58-46-16 be amended to read as follows:

22 58-46-16. A pure captive insurance company may make written application for filing the  
23 report required by § 58-46-15 on a fiscal year-end that is consistent with the parent company's  
24 fiscal year. If an alternative reporting date is granted, the annual report is due sixty days after

1 the fiscal year-end.

2 Section 9. That § 58-46-19 be amended to read as follows:

3 58-46-19. No pure captive insurance company is subject to any restrictions on allowable  
4 investments. However, the director may prohibit or limit any investment that threatens the  
5 solvency or liquidity of any such company.

6 Unless the director has provided written approval of a different requirement or limitation,  
7 group captive insurance companies shall comply with the investment requirements and  
8 limitations applicable to other insurance companies pursuant to chapter 58-27.

9 Section 10. That § 58-46-20 be amended to read as follows:

10 58-46-20. A pure captive insurance company may make a loan to its parent or affiliated  
11 companies. No loan to its parent or affiliated companies may be made without prior written  
12 approval of the director. A group captive insurance company may make a loan to its group or  
13 members of its group if prior written approval by the director has been provided. The approval  
14 shall be evidenced by a note in a form approved by the director.

15 Section 11. That chapter 58-46 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 A pure captive insurance company may enter into any arrangement to provide risk  
18 management services to an unaffiliated controlled business or an unaffiliated business but may  
19 not accept any insurance risk from an unaffiliated business. A pure or group captive insurance  
20 company may not insure:

- 21 (1) Any life or health risk;  
22 (2) Any personal lines property casualty risk; or  
23 (3) The risk other than that of itself or its affiliates.